

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SANDRA E. FLUCK,	)	
	)	
Plaintiff,	)	
	)	C. A. No. 06-188-GMS
v.	)	
	)	
BELLA VISTA DEVELOPMENT, LLC,	)	
a Virginia corporation, BELLA VISTA	)	TRIAL BY A JURY DEMANDED
TOWNHOME CONDOMINIUM	)	
ASSOCIATION, INC., a Delaware	)	
Corporation, RESORT REALTY GROUP,	)	
INC., a Delaware corporation, WILLIAM J.	)	
MITCHELL, individually, and WAYNE	)	
MITCHELL, individually,	)	
	)	
Defendants.	)	

**APPENDIX TO DEFENDANT RESORT REALTY GROUP, INC.'S OPENING  
BRIEF IN SUPPORT OF ITS MOTION TO DISMISS**

FERRY, JOSEPH & PEARCE, P.A.

/s/Robert K. Pearce  
ROBERT K. PEARCE, ESQ. (I.D. No. 191)  
THOMAS R. RIGGS, ESQ. (I.D. No. 4631)  
824 Market Street, Suite 904  
Wilmington, DE 19899  
(302) 575-1555  
rpearce@ferryjoseph.com  
Attorneys for Defendant  
Resort Realty Group, Inc.

Dated: January 20, 2007

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Arthur F. DiSabatino  
(1938-2001)

(\* ALSO PA BAR)  
(+ ALSO NJ BAR)  
(\*\* ALSO MA AND NY BARS)  
(++ NJ BAR ONLY)

August 31, 2006

[rpearce@ferryjoseph.com](mailto:rpearce@ferryjoseph.com)

Via Facsimile (302) 934-8400

Jennifer S. Donahue, Esquire  
Doroshow, Pasquale, Krawitz & Bhaya  
213 E. DuPont Highway  
Millsboro, DE 19966

Re: Fluck v. Re/Max Realty Group

Dear Jennifer:

This will confirm our telephone conversation of August 30, 2006. In short, I advised you that I have been retained by State Farm to represent ReMax Realty Group in this matter. I further advised you that it appears that the service of the complaint upon ReMax was purportedly made by serving William Mitchell and that since Mr. Mitchell is not authorized to accept service for ReMax, I believe that service was not perfected. In any event, the principal of ReMax advises me that he did not received the complaint. You were kind enough to agree to withdraw the motion for default judgment that has been filed against ReMax. Your agreement was conditioned upon a confirmation from me that there are no insurance coverage issues.

It is my understanding that you will file a withdrawal of the motion for default judgment. I advised you that I would accept service on behalf of ReMax. Thereafter, I will file an answer.

Thank you for your cooperation.

Sincerely,  
  
Robert K. Pearce

RKP/mec

A-1

cc: Mr. Robert Reed

Law Offices

**DOROSHOW  
PASQUALE  
KRAWITZ  
& BHAYA**

September 12, 2006

ERIC M. DOROSHOW, DE, PA, DC  
ROBERT PASQUALE, DE, PA  
ARTHUR M. KRAWITZ, DE, PA  
SHAKUNTALA L. BHAYA, DE, PA  
MARY C. BOUDART, DE  
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Wilmington, DE 19899

RE: Fluck v. Bella Vista, et. al.  
Case No. 06-188

RECEIVED

SEP 12 2006

ROBERT K. PEARCE

Dear Bob:

I am in receipt of your letter dated September 5, 2006 regarding the above-referenced matter. Kindly confirm that you will be accepting service of the Amended Complaint on behalf of ReMax Realty Group.

Per your request, please be advised that my client's family physicians in the ten (10) years prior to the accident are as follows:

- Dr. Deborah Bren, 1365 Blue Mountain Drive, Danielsville, PA 18038
- Dr. Melinda Toney, 623 W. Union Boulevard, Bethlehem, PA 18015

My client has received treatment for injuries sustained in the accident from the following medical providers:

- Dr. Patrick Brogle, 800 Ostrum Street, Suite 202, Bethlehem, PA 18015
- Beebe Medical Center, 424 Savannah Road, Lewes, DE 19958
- St. Luke's North Rehabilitation Services, 153 Brodhead Road, Bethlehem, PA 18015
- Lehigh Valley Acupuncture Center, 101 Bridge Street, Catasauqua, PA 18032

Robert K. Pearce, Esq.

9/12/2006

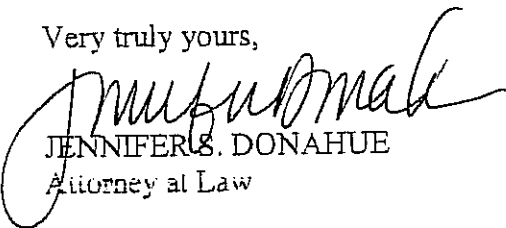
Page 2

- Dr. Steele of First State Orthopaedics Medical Arts Pavilion, Suite 228  
4745 Ogletown-Stanton Rd., Newark, DE 19713-1338

Finally, my client has been employed with Moravian College, 1200 Main Street, Bethlehem, PA 18018 during the last ten (10) years to the present.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



JENNIFER S. DONAHUE  
Attorney at Law

JSD/mlk

cc: Sandra Fluck

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September 15, 2006

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Via Facsimile (302) 934-8400

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Re: Fluck v. Re/Max Realty Group

Dear Jennifer:

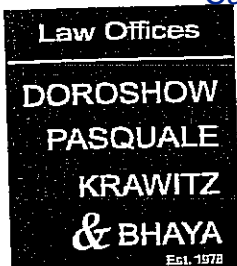
Thank you for your letter of September 12, 2006. This will confirm that I will accept service on behalf of Re/Max Realty Group. I look forward to receiving the signed medical records authorization and the signed employment records authorization.

Sincerely,



Robert K. Pearce

RKP/mec



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OCT 16 2006

ROBERT K. PEARCE

October 12, 2006

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824 North Market Street, Suite 904  
P.O. Box 1351  
Wilmington, DE 19899

RE: Fluck v. Bella Vista, et. al  
Docket No. 1:06-CV-188 GMS

Dear Bob:

Kindly advise me when you will be filing an Answer on behalf your clients regarding the above-referenced matter.

I look forward to hearing from you.

Very truly yours,

JENNIFER S. DONAHUE  
Attorney at Law

JSD/mlk

Enclosures

cc: Sandra Fluck (w/o enc.) A-5

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October 23, 2006

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Via Facsimile (302) 934-8400  
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Re: Fluck v. Re/Max Realty Group

Dear Jennifer:

I have received your letter of October 12, 2006. Pursuant to our telephone conversation, which was memorialized in my letter of August 31, 2006, I had agreed to accept service of the complaint for Remax and stated that I would file an Answer once I had been served with the complaint. As of this date, I have not been served with the complaint, and therefore, I have not filed an answer. I reiterate that I will file an answer as soon as I am properly served with the complaint.

Please contact me if you have any questions.

Sincerely,



Robert K. Pearce

RKP/mec



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November 2, 2006

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Via Facsimile (302) 934-8400

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213 E. DuPont Highway  
Millsboro, DE 19966

Re: Fluck v. Re/Max Realty Group

Dear Jennifer:

Following our last telephone conversation, I reviewed the docket entries and the amended complaint. It appears that you have not sued the correct party. The named defendant, Re/Max Realty Group, is not a legal entity. Rather, it is a trade name under which Resort Realty Group, Inc. does business. Under these circumstances, I think that I have no alternative but to insist that, as stated in my original letter, the amended complaint must be formally served. I reiterate that I have authority from my client to accept service on its behalf. I will leave it up to you to determine whether or not to amend the complaint to add to the correct defendant, but I reiterate that the amended complaint in its current form does not name a legal entity.

Please contact me if you have any questions.

Sincerely,



Robert K. Pearce  
A-7

RKP/mec

cc: Mr. Robert Reed

November 13, 2006

**VIA E-FILING**

The Honorable Gregory M. Sleet  
U.S. District Court for the District of Delaware  
844 N. King Street  
Wilmington, DE 19801

**RE: *Sandra Fluck v. Bella Vista Development, LLC, Bella Vista Townhome  
Condominium Association Inc., Re/Max Realty Group, William J. Mitchell and  
Wayne Mitchell***  
**C.A. No.: 1:06-cv-00188 GMS**

Dear Judge Sleet:

Please accept this letter as the parties' Joint Status Report in preparation for the Scheduling Conference on November 21, 2006.

**Jurisdiction and Service**

This action arises from personal injuries sustained by the Plaintiff in a slip and fall accident on June 27, 2004. The Court retains jurisdiction as this action is between citizens of different states and Plaintiff contends that the amount in controversy exceeds \$75,000.00. At this time, Defendant Re/Max Realty is not yet subject to the Court's jurisdiction as formal service has not yet been perfected.

**Substance of the Action**

The legal basis for Plaintiff's claims is that the Defendants maintained a dangerous condition on their property, that the condition caused the injuries complained of, and that the condition causing the injury was placed there by the Defendants or allowed to remain after the Defendants knew or should have known of its existence. Defendants' defenses include: Plaintiff's failure to maintain a proper lookout; contributory/comparative negligence; failure to state a cause of action; assumption of the risk of injury; failure to exercise proper control over her bodily movements in a way that would have reasonably prevented the accident and alleged injuries; and Plaintiff's injuries/damages are the proximate result of an unavoidable accident.

**Identification/Narrowing of the Issues**

Liability and damages are currently in dispute.

The Honorable Gregory M. Sleet  
Fluck v. Bella Vista et al  
November 13, 2006  
Page 2

**Relief**

Plaintiff seeks compensatory damages for her pain, suffering, lost wages, and medical bills (past, present and future) in an amount in excess of the Court's diversity jurisdiction amount.

**Amendment of Pleadings**

Plaintiff filed an Amended Complaint on June 16, 2006. It is likely that Plaintiff will be filing a Motion to Amend the Complaint to correct the identification of Defendant Re/Max Realty Group, by naming Defendant Resort Realty Group, Inc.

**Discovery**

Discovery in this matter is ongoing. The parties anticipate six (6) months for completion of discovery.

**Trial**

A jury trial has been demanded by all parties. The parties do not believe that bifurcation of the issues will be necessary. Estimated trial length is three (3) days.

**Settlement Negotiations**

As liability has been denied, settlement negotiations have not yet taken place. As discovery proceeds, Plaintiff would anticipate entering into settlement negotiations. Plaintiff suggests referral to the Magistrate for mediation.

Counsel for the parties have conferred about each issue as stated above.

Respectfully Submitted,

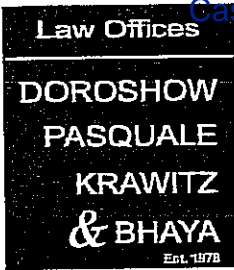
*/s/ Jennifer S. Donahue*  
JENNIFER S. DONAHUE (ID #4700)  
Attorney for Plaintiff

*/s/ Stephen P. Casarino*  
STEPHEN P. CASARINO (ID #174)  
Attorney for Defendants Bella Vista Development/Wayne Mitchell

The Honorable Gregory M. Sleet  
Fluck v. Bella Vista et al.  
November 13, 2006  
Page 3

*/s/ Charles P. Coates*  
CHARLES P. COATES (ID # 917)  
Attorney for Defendant Bella Vista Townhome/Condo. Assoc. Inc.

*/s/ Roger A. Akin*  
ROGER A. AKIN (ID # 395)  
Attorney for Defendant William J. Mitchell



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DEC 21 2006

ROBERT K. PEARCE

December 19, 2006

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**RE: Fluck v. Bella Vista, et. al.**  
**Docket No. 1:06-CV-188 GMS**

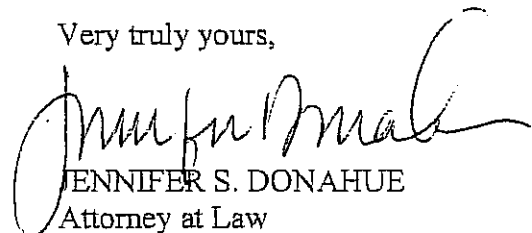
Dear Mr. Pearce:

Enclosed please find a filed copy of the Stipulation to Amend the Complaint in the above-referenced matter.

Kindly advise whether you will accept service on behalf of your client or whether I need to pursue formal service through the Sheriff.

Thank you for your attention to this matter.

Very truly yours,



JENNIFER S. DONAHUE  
Attorney at Law

JSD/mlk  
Enclosure  
cc: Sandra Fluck (w/o enc.)

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OF COUNSEL

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THOMAS R. RIGGS

December 27, 2006

(\*ALSO FL BAR)  
(\*ALSO NJ BAR)  
(\*\*ALSO FL, MA AND NY BARS)  
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Via Facsimile (302) 934-8400  
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Doroshow, Pasquale, Krawitz & Bhaya  
213 E. DuPont Highway  
Millsboro, DE 19966

Re: Fluck v. Re/Max Realty Group

Dear Jennifer:

I have received your letter of December 19, 2006. I reiterate my willingness to accept service of the Amended Complaint on behalf of my client. I have never stated, however, that I would dispense with formal service of the Amended Complaint. In other words, the Sheriff's office should serve me with the Amended Complaint. Thereafter, I will file an Answer.

Sincerely,



Robert K. Pearce

RKP/tt

cc: Robert Reed